

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 229.

WILLIAM C. GLASS, PLAINTIFF IN ERROR,

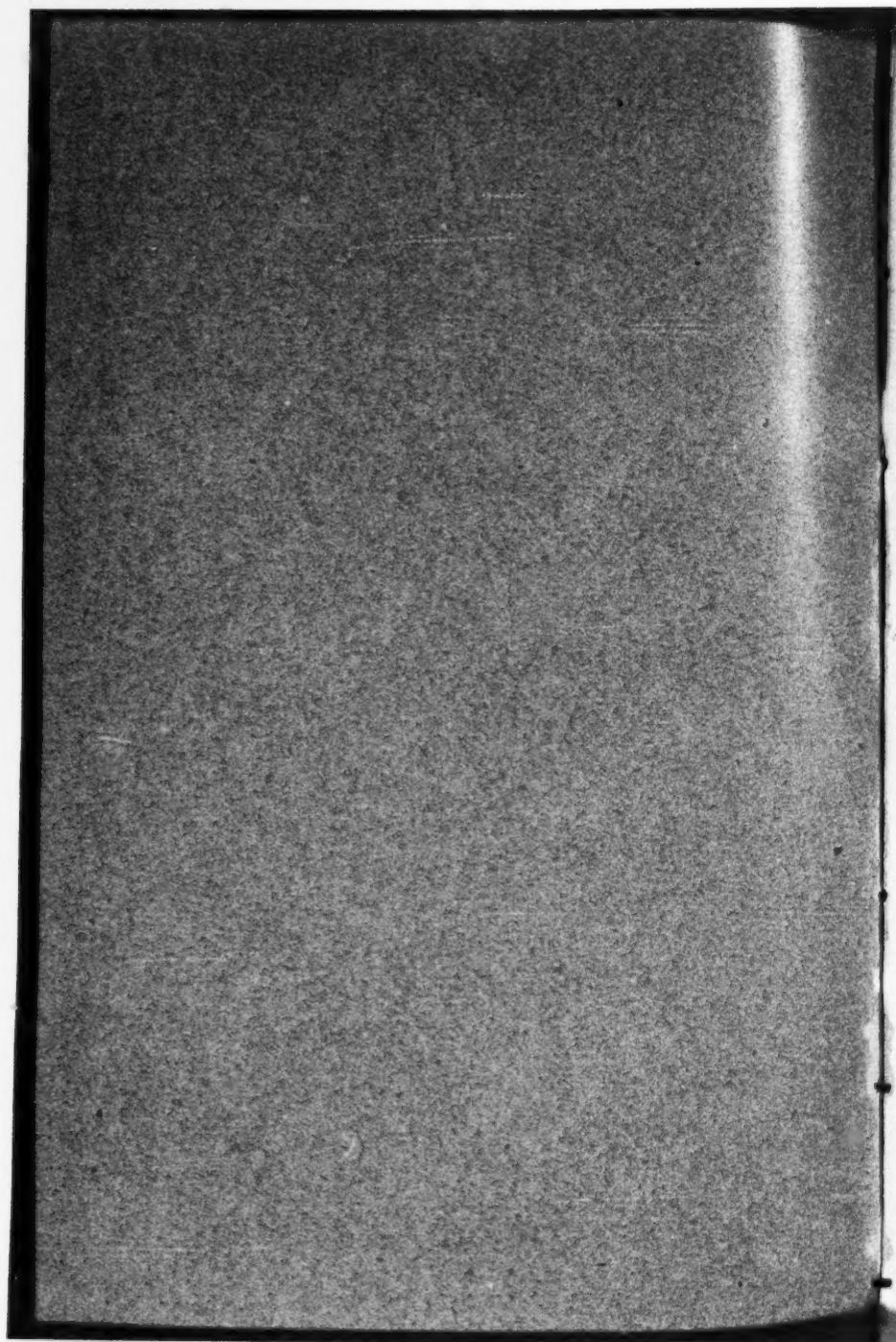
VS.

THE POLICE JURY OF THE PARISH OF CONCORDIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF LOUISIANA.

FILED MARCH 11, 1899.

(17,320.)



(17,320.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 735.

WILLIAM C. GLASS, PLAINTIFF IN ERROR,

vs.

THE POLICE JURY OF THE PARISH OF CONCORDIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF LOUISIANA.

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

WILLIAM C. GLASS, Plaintiff in Error,	} No. 8283.
<i>versus</i>	
THE POLICE JURY OF THE PARISH OF CONCORDIA, Defendant in Error.	

John D. Rouse, Esq., and William Grant, Esq., for plaintiff in error; Messrs. Farrar, Jonas, Kruttschnitt & Gurley, and J. N. Luce, Esq., for defendant in error.

Writ of error to the circuit court of the United States for the eastern district of Louisiana from the Supreme Court of the United States of America, returnable within thirty (30) days from the fifteenth (15th) day of February, A. D. 1899, at the city of Washington, D. C.

Transcript of Record.

1 United States Circuit Court, Eastern District of Louisiana,
New Orleans Division.

WILLIAM C. GLASS	} No. 8283. Original Peti- tion Filed November 2nd, 1877.
<i>vs.</i>	
POLICE JURY OF CONCORDIA PARISH.	

Amended petition. Filed June 17, 1898.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The amended petition of William C. Glass, a citizen of the State of Missouri, residing in Kansas City, respectfully represents that the Police Jury of the Parish of Concordia, a municipal corporation created by virtue of the laws of the State of Louisiana and a citizen of said State, is indebted unto your petitioner in the sum of (\$16,260.27), sixteen thousand two hundred and sixty & $\frac{27}{100}$ dollars, with interest, as hereinafter mentioned, for this, to wit:

Your petitioner is the owner of certain drafts, orders, or warrants, drawn by the proper officers of said parish of Concordia on the parish treasurer, a descriptive list of which is hereunto annexed for reference, and said drafts, orders, or warrants constitute legal evidence of work performed for the said parish and by virtue of its authority, and that the payees of said warrants were entitled to be paid by the treasurer of said parish the respective amounts of said warrants in the manner and out of the funds therein specified.

Petitioner avers that on the first day of November, 1866, an ordinance was passed by said police jury to provide for the funding of the indebtedness of said parish, and said ordinance was amended the 22 of January, 1867; that said ordinance of November 1st, 1866, as amended in January, 1867, provided for

the issue of coupon bonds, negotiable in form, payable twelve years after date, with six per cent. per annum interest from date, to be delivered to such creditors of said parish as should assent to the funding mentioned in said ordinance as amended, all of which will appear by said ordinances to be produced upon the trial hereof.

Petitioner avers that, in pursuance of the invitation extended to the creditors of said parish, the said warrants or orders held and owned by him were presented to said police jury, and the same were exchanged for coupon bonds, authorized as aforesaid, which bonds are still in petitioner's possession and will be produced upon the trial of this cause.

Petitioner avers that said police jury in the years 1867, 1868, 1869, 1870, 1871, 1872, & 1873 recognized the validity of said bonds and levied taxes to meet and pay the interest and part of the principal thereof, as required by the terms of said ordinance of November, 1866, as amended in 1867.

Petitioner avers that by the terms of the sixth section of said ordinance of November 1st, 1866, by virtue of which said bonds were issued, it was agreed "that it shall be the duty of the police jury to assess each year taxes sufficient to pay the interest on the bonds therein directed to be issued, and to absorb such portion of the principal as may be practicable, and on failure so to assess and apply such tax, the holders of the bonds shall be entitled to all the rights and remedies heretofore existing or arising from assessments already made for the payment of the original debt."

Petitioner avers that the said Police Jury of the Parish of Concordia have not only failed to levy any taxes for the year 1874 and subsequent years to meet the payment of the interest on said bonds issued as aforesaid in exchange for the original obligations; but they positively refuse so to do, and have repudiated said bonds. Petitioner avers that by this conduct on the part of said Police Jury of the Parish of Concordia he is entitled, under the terms of the ordinance aforesaid, to resort to such proceedings as he may see fit to enforce the original obligations aforesaid.

Petitioner further avers that said warrants or orders were each in form similar to Exhibit "A," hereto annexed and made part of this petition, and were made payable to Mathew Carr or order, who was a citizen of the State of Louisiana, and were owned by him at the date of his death, in 1863, and were part of his estate; that his succession was opened in the probate court for the said parish of Concordia, and that plaintiff acquired the ownership of said warrants or orders and the bonds issued in exchange therefor under the said funding ordinance by purchase at a sale of the assets of the estate of said Carr on the 22nd of May, 1868, made by the sheriff of said parish, under the authority of an order of said probate court having the administration of said succession, and that plaintiff was a citizen of the State of Missouri at the time of said purchase.

Wherefore petitioner prays that the Police Jury of the Parish of Concordia, through its president or other proper officer, be cited to appear and answer this petition, and after due proceedings con-

demned to pay petitioner the aforesaid sum of sixteen thousand two hundred and sixty dollars & twenty-seven cents (\$16,260.27), the amount of said original warrants or obligations, with interest, as specified in the descriptive list thereof, hereto annexed, with costs of suit; and petitioner prays for general relief.

(Signed)

ROUSE & GRANT, Att'ys.

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Let this amended petition be filed.

June 17th, 1898.

(Signed)

CHARLES PARLANGE,

U. S. Judge.

ENGINEER'S OFFICE,

PARISH OF CONCORDIA, January 20, 1863.

To the treasurer of the parish of Concordia:

Pay Matthew Carr or order \$13.554 and charge same to account of general levee fund.

(Signed)

WILLIAM EUSTIS,

Levee Engineer.

EXHIBIT A.

Exception to Jurisdiction. Filed June 17, 1898.

U. S. Circuit Court, Eastern District of Louisiana.

WILLIAM C. GLASS

vs.

POLICE JURY OF THE PARISH OF CONCORDIA.

} No. 8283.

Now comes The Parish of Concordia, made defendant in this cause, and for exception to the original and supplemental petition herein filed avers that this honorable court is without jurisdiction to hear and entertain this cause, because it appears that the suit is brought upon a chose in action acquired by the plaintiff from a citizen of the State of Louisiana, on which chose of action the said original holder thereof could not sue in this court.

Wherefore defendant prays that this exception may be maintained and the plaintiff's suit dismissed, with costs.

(Signed)

(")

J. N. LUCE,

FARRAR, JONAS, KRUTTSCHNITT &

GURLEY, Att'ys.

5 *Agreement Submitting Case on Exception to the Jurisdiction.*

Filed June 17, 1898.

United States Circuit Court for the Eastern District of Louisiana.

WM. C. GLASS
vs.
POLICE JURY OF THE PARISH OF CONCORDIA. } No. 8283.

The written submission heretofore made on the 1st of June, 1887, is set aside, and it is agreed that the case shall now be tried solely on the defendant's exception to the jurisdiction of the court, all questions going to the merits to be reserved for trial after said exceptions is decided.

New Orleans, La., June 7, 1898.

(Signed) ROUSE & GRANT, *For Plaintiff.*

(Signed) J. N. LUCE.

(Signed) FARRAR, JONAS, KRUTTSCHNITT &
GURLEY, *Att'ys — Def't.**Submission of Case on Exception to the Jurisdiction.*

Extract from the Minutes, April Term, 1898.

NEW ORLEANS, SATURDAY, June 18, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

WM. C. GLASS
vs.
POLICE JURY, PARISH OF CONCORDIA. } No. 8283.

The plea to the jurisdiction of the court, filed by the defendant herein, came on this day for hearing under the agreement on file—Farrar, Jonas, Kruttschnitt & Gurley and J. N. Luce appearing for the Police Jury of Concordia in support of plea; Rouse & Grant for plaintiff in the cause—and was argued and submitted, when the court took time to consider.

6 *Judgment Maintaining Exception, &c.*

Entered and filed January 14, 1899.

United States Circuit Court, Eastern District of Louisiana.

WM. C. GLASS
vs.
POLICE JURY OF THE PARISH OF CONCORDIA. } No. 8283.

This cause came on to be heard at this term on the defendant's exception to the jurisdiction of the court and was argued by counsel; whereupon, in consideration whereof and for the reasons on file, it is now ordered that the defendant's said exception be main-

tained, and that plaintiff's petition be dismissed with costs, but without prejudice to his right to renew his action in any competent court and with leave to amend if plaintiff is so advised.

New Orleans, La., January 14th, 1899.

(Signed)

CHARLES PARLANGE,

U. S. Judge.

Certificate as to Jurisdiction. Filed January 14th, 1899.

United States Circuit Court, Eastern District of Louisiana.

WM. C. GLASS

vs.

POLICE JURY OF THE PARISH OF CONCORDIA.

No. 8283.

This cause was tried at the present term of the court solely on the defendant's exception to the jurisdiction of the court, and it appearing from the jurisdictional facts alleged in plaintiff's petition, admitted to be true by said exception, that the warrants and orders sued on were payable to the order of Matthew Carr, deceased, who was a citizen of the State of Louisiana, and were assets of his estate, and that the plaintiff acquired title thereto through a judicial sale made by the sheriff of the parish of Concordia on the 22d day of May, 1868, under authority of an order of the probate court of said parish having the administration of said estate; that plaintiff at the date of his said purchase and at the date of filing his original petition herein, on the 2d day of November, 1877, was a citizen of the State of Missouri, and that the defendant was a citizen of the State of Louisiana.

Under the state of facts the only question at issue upon the trial of said exception was whether the case, for the purpose of jurisdiction, comes within the following restriction imposed by section I of the act of Congress approved March 3, 1875: "Nor shall any circuit or district court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes, negotiable by the law merchant and bills of exchange."

And the court, for the reasons set forth in the written opinion hereto annexed and made part hereof, has this day maintained the defendant's exception to the jurisdiction of this court and dismissed plaintiff's petition, with leave to amend, if so advised, and without prejudice, and now grants this certificate for the purpose of enabling the plaintiff to obtain a review by the supreme court of said jurisdictional question under the 5th section of the act of Congress approved March 3, 1891.

New Orleans, La., January 14th, 1899.

(Signed)

CHARLES PARLANGE,

U. S. Judge.

Opinion on Exception. Filed January 14th, 1899.

United States Circuit Court, Eastern District of Louisiana.

WILLIAM C. GLASS

vs.

POLICE JURY OF THE PARISH OF CONCORDIA.

} No. 8283.

Opinion of the court on defendant's exception to the jurisdiction.

PARLANGE, J. :

Plaintiff, a citizen of the State of Missouri, brought this suit against the Police Jury of the Parish of Concordia, a municipal corporation created by the laws of the State of Louisiana, on certain warrants issued by the municipal corporation for levee work done by one Matthew Carr.

The plaintiff alleges :

"The petitioner further avers that said warrants or orders were each in form similar to Exhibit 'A,' hereto annexed and made part of this petition, and were made payable to Mathew Carr or order, who was a citizen of the State of Louisiana, and were owned by him at the date of his death, in 1863, and were part of his estate; that his succession was opened in the probate court for the said parish of Concordia, and that plaintiff acquired the ownership of said warrants or orders and the bonds issued in exchange therefor under the said funding ordinance by purchase at a sale of the assets of the estate of said Carr, on the 22nd of May, 1868, made by the sheriff for said parish under the authority of an order of said probate court, having the administration of said succession, and that plaintiff was a citizen of the State of Missouri at the time of said purchase."

It is well settled that the pleadings in a cause brought in a Federal court must plainly show the jurisdiction upon their face. It is also clear that in suits by assignees of choses in action the pleadings must show that the assignor could have sued if there had been no assignment.

In this case the court is unable to determine from the pleadings the ground upon which the plaintiff bases the jurisdiction. It is essential that this be made plain. It may be plaintiff's conception that the proceedings in the succession of Carr operated a devolution of Carr's title in the warrants upon the plaintiff by operation of law, and that plaintiff is not the assignee of Carr; or plaintiff may be relying upon the position that the title of Carr in the warrants vested in some administrator of executor who would have been competent to sue in this court, and that plaintiff acquired from him.

Or plaintiff may be relying on other grounds still; but, whatever may be the view under which plaintiff brought this suit, he must set out the facts showing the jurisdiction.

It is plain to the court that the petition, as it now stands, does not set out a jurisdictional fact. The exceptions must be sustained

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and the petition dismissed, with leave to plaintiff to amend, if so advised.

Petition for Writ of Error and Order. Filed February 15th, 1899.

United States Circuit Court, Eastern District of Louisiana.

WILLIAM C. GLASS

vs.

THE POLICE JURY OF THE PARISH OF CONCORDIA.

} No. 8283.

To the Honorable Charles Parlange, district judge, presiding in and holding said circuit court:

The petition of William C. Glass, plaintiff in the above-entitled cause, respectfully shows that he is desirous of suing out a writ of error from the Supreme Court of the United States to reverse the judgment herein rendered against him on the exception to the jurisdiction of the court; that he herewith presents a writ of error and citation thereon, in due form, together with bond and
10 surety for costs, according to law, together with his assignment of errors.

Wherefore he prays that said writ of error be allowed and made returnable to the Supreme Court of the United States within 30 days from the date hereof, to operate as a supersedeas upon a bond for \$100, conditioned as the law directs.

(Signed)

(")

J. D. ROUSE,

WM. GRANT,

Att'ys for Plaintiff.

Order.

Let a writ of error issue as prayed, to operate as a supersedeas upon plaintiff giving bond in the sum of \$100, with surety conditioned as the law directs.

New Orleans, La., February 15th, 1899.

(Signed)

CHARLES PARLANGE,

United States Judge.

Assignment of Errors. Filed February 15th, 1899.

Supreme Court of the United States, October Term, 1898.

WM. C. GLASS, Plaintiff in Error,

vs.

POLICE JURY OF CONCORDIA PARISH, Defendant in Error.

Assignment of errors by plaintiff in error.

1°. The circuit court erred in maintaining the defendant's exception to its jurisdiction and dismissing the plaintiff's suit.

2°. The circuit court erred in holding that the judicial sale of the warrants sued on in this case, made in the succession of Matthew Carr, deceased, was an assignment of said warrants, and that
11 the plaintiff, who purchased the same at such sale, is an assignee thereof, incapable of suing thereon in the circuit court,

although a citizen of the State of Missouri, because neither the said Matthew Carr in his lifetime nor his legal representatives since his death are averred to have possessed the requisite citizenship to sue in that court if no assignment had been made, and in maintaining for these reasons the defendant's exception to the jurisdiction of the circuit court.

(Signed)
(")

J. D. ROUSE,
WM. GRANT,

Attorneys for Plaintiff in Error.

Bond for Writ of Error. Filed February 15, 1899.

Know all men by these presents that we, William C. Glass, as principal, and William Grant, as surety, are held and firmly bound unto the Police Jury of the Parish of Concordia in the full and just sum of one hundred dollars, to be paid to the said Police Jury of the Parish of Concordia, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 15th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a circuit — of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein William C. Glass is plaintiff and the Police Jury of the Parish of Concordia is defendant, a judgment was rendered against the said William C. Glass, plaintiff, on the 14th day of January, 1899, dismissing his suit for want of jurisdiction; and the said William C. Glass, plaintiff, 12 having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Police Jury of the Parish of Concordia, citing and admonishing it to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days from the date of said writ:

Now the condition of the above obligation is such that if the said William C. Glass shall prosecute his writ to effect and answer all damages and cost if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed)

WM. C. GLASS,

By WM. GRANT, *His Att'y.* [L. S.]

(Signed)

WILLIAM GRANT. [L. S.]

February 15, 1899.

Approved by—

(Signed) CHARLES PARLANGE, *U. S. Judge.*

(Endorsed:) United States circuit court, eastern district of Louisiana. William C. Glass vs. Police Jury, Parish of Concordia. Bond for writ of error.

13 UNITED STATES OF AMERICA, ss :

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between William C. Glass, plaintiff, and The Police Jury of the Parish of Concordia, defendant, No. 8283 on the docket of said circuit court, involving the jurisdiction thereof, a manifest error hath happened, to the great damage of the said William C. Glass, plaintiff, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the said Supreme Court, within 30 days from the date hereof, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this fifteenth day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

E. R. HUNT,
*Clerk of the United States Circuit Court for the
Eastern District of Louisiana.*

Allowed by—
CHARLES PARLANGE,
U. S. Judge.

14 [Endorsed:] United States circuit court. No. 8283. William C. Glass *versus* Police Jury, Parish of Concordia. Writ of error. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Feb. 15, 1899. E. R. Hunt, clerk.

I, Edward R. Hunt, clerk of the U. S. circuit court for the eastern district of Louisiana, hereby certify that a copy of the within writ of error has been lodged in the clerk's office of said court for the inspection of and notice to the defendant in error by attorney for plaintiff in error.

February 15, 1899.

E. R. HUNT, *Clerk.*

15 THE UNITED STATES OF AMERICA :

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to The Police Jury of the Parish of Concordia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein William C. Glass is plaintiff and you are defendant, No. 8283 on the docket of said court, to show cause, if any there be, why the judgment rendered against the said William C. Glass, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 15th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

CHARLES PARLANGE, *Judge.*

16 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 8283. William C. Glass vs. Police Jury, Parish of Concordia. Citation. Marshal's return. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Feb. 17, 1899. E. R. Hunt, clerk.

NEW ORLEANS, *Feb. 17th, '99.*

Service of this citation is accepted.

FARRAR, JONAS, KRUTTSCHNITT
& GURLEY,

Att'ys for the Parish of Concordia.

17 *Stipulation as to the Transcript of Appeal.*

Filed February 17th, 1899.

U. S. Circuit Court, Eastern District of Louisiana.

WILLIAM C. GLASS

vs.

POLICE JURY OF THE PARISH OF CONCORDIA. }

No. 8283.

For the purposes of the writ of error sued out in this cause and to save unnecessary costs, it is stipulated that the original petition, filed on the 2d day of November, 1877, and the defendant's exceptions thereto, filed December 4, 1877, and all other pleas and proceedings in the cause, except the amended petition of the plaintiff, filed June 17, 1898, and the defendant's exception to the jurisdiction of the court, filed on the same day, and the proceedings had

on such amended petition and exception, may be omitted from the transcript.

Feb'y 17, 1899.

(Signed)

FARRAR, JONAS, KRUTTSCHNITT
& GURLEY, *Att'ys, P'sh Concordia.*

(Signed)

ROUSE & GRANT, *Att'ys for Plaintiff.*

18 UNITED STATES OF AMERICA :

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 17 pages contain and form a full, complete, true, and perfect transcript of the amended petition, warrant or order marked Exhibit "A," plea to jurisdiction, agreement submitting case on exception to jurisdiction, submission of case on plea to the jurisdiction, judgment maintaining exception, certificate as to jurisdiction, opinion on exception, petition for writ of error, order on petition for writ of error, assignment of errors, bond for writ of error, writ of error, citation in error, acceptance of service of citation in error, & stipulation as to the transcript of appeal in the case of Wm. C. Glass *versus* Police Jury of Concordia Parish, No. 8283 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 8th day of March, A. D. 1899.

{ Seal U. S. Circuit Court for the 5th Circuit & }
Eastern District of La.

E. R. HUNT, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 8th day of March, A. D. 1899.

CHARLES PARLANGE, *Judge.*

Endorsed on cover: File No., 17,320. E. Louisiana C. C. U. S. Term No., 735. William C. Glass, plaintiff in error, *vs.* The Police Jury of the Parish of Concordia. Filed March 11th, 1899.

Case

Ex parte

Search

UNITED STATES SUPREME COURT

October Term, 1888

No. 1221

WILLIAM O. GLASS, Plaintiff in Error,

vs.

POLICE JURY, PARISH OF CONCORDIA, Defendants
in Error.

J. D. ROUSE,
WM. GRANT,

Attorneys for Plaintiff in Error.

A. CROSBY & CO., LITH., 107 N. 3RD ST., PHILADELPHIA.

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1899.

No. ———

WILLIAM C. GLASS, PLAINTIFF IN ERROR,

versus

POLICE JURY, PARISH OF CONCORDIA, DEFENDANT
IN ERROR.

STATEMENT.

The original petition in this suit was filed in the Circuit Court of the United States for the Eastern District of Louisiana, on the 2d of November, 1877, by the plaintiff, a citizen of the State of Missouri, against the defendant, a citizen of the State of Louisiana, to recover the amount of certain instruments in writing, in the following form:

“ENGINEER’S OFFICE, }
“Parish of Concordia, January 20, 1863. }

“*To the Treasurer of the Parish of Concordia:*

“Pay Matthew Carr or order, \$13,554, and charge same to account of general levee fund.

“(Signed) WILLIAM EUSTIS, *Levee Engineer.*”

The plaintiff acquired title to the said warrants through a judicial sale of the assets of the succession of Carr, made by the sheriff of said parish under authority of an order of the Probate Court which had the administration of his estate.

The particular averment in question affecting the jurisdiction of the Circuit Court is contained in plaintiff's amended petition, and is as follows;

"Petitioner further avers that said warrants or orders were each in form similar to 'Exhibit A,' hereto annexed and made part of this petition, and were made payable to Matthew Carr or order, who was a citizen of the State of Louisiana, and were owned by him at the date of his death, in 1863, and were part of his estate; that his succession was opened in the Probate Court of the said parish of Concordia, and that plaintiff acquired the ownership of said warrants or orders, and the bonds issued in exchange therefor under said funding ordinance, by purchase at a sale of the assets of the estate of said Carr on the 22d day of May, 1868, made by the sheriff of said parish, under the authority of an order of said Probate Court having the administration of said succession, and that plaintiff was a citizen of the State of Missouri at the time of said purchase" (R., p. 2).

To this amended petition defendant filed an exception averring that the Circuit Court was without jurisdiction, "because it appears that suit is brought upon a chose in action acquired by the plaintiff from a citizen of the State of Louisiana on which chose in action the said original holder could not sue in this Court" (R., page 3).

As the exception admitted the facts averred in the amended petition it was submitted to the Court on the question of law presented by the pleadings.

The Court sustained the exception and has certified that the cause was heard solely on the question of jurisdiction (R., page 5).

The case has been removed to this Court for review on the jurisdictional question certified under Section 5 of the act of March 3, 1891, on the following assignments of error:

1. The Circuit Court erred in maintaining defendant's exception to its jurisdiction, and dismissing plaintiff's suit.
2. The Circuit Court erred in holding that the judicial sale of the warrants sued on in this cause made in the Succession

of Matthew Carr, deceased, was an assignment of said warrants, and that the plaintiff who purchased the same at such sale is an assignee thereof incapable of suing thereon in the Circuit Court, although a citizen of Missouri, because neither the said Matthew Carr in his lifetime, nor his legal representatives since his death are averred to have possessed the requisite citizenship to sue in that Court if no assignment had been made, and in maintaining for these reasons the defendant's exception to the jurisdiction of the Circuit Court" (R., page 7).

ARGUMENT.

The only question presented by the record is whether the judicial sale of the choses in action sued on herein was an assignment, and whether the plaintiff who acquired them at such sale is an assignee thereof, within the meaning of the Act of March 3, 1875, which regulated the jurisdiction of the Circuit Court when this suit was instituted. The restriction on that jurisdiction as prescribed by said act is in the following language:

"Nor shall any Circuit or District Court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon, if no assignment had been made, except in cases of promissory notes negotiable by the law merchant and bills of exchange."

The contention of the defendant is that the sale of the warrants sued on, made by the sheriff under the order of the Probate Court, was an assignment, and that unless Matthew Carr, in his lifetime, or his legal representatives after his death, could have sued in the Circuit Court, plaintiff cannot, although he possesses the necessary citizenship.

We concede that neither Carr, his heirs, nor the administrator of his estate, nor the sheriff who made the sale, nor the judge who ordered the sale, possessed the necessary citizenship to sue on the warrants in the Circuit Court at the time this action was brought. But we assert, on principle, that a purchaser at a sale made by authority of a probate

court derives title from none of these sources, but takes title by the adjudication of the law acting directly, *in rem*, upon the property itself. In this respect courts of probate in Louisiana stand upon the same footing as similar courts in the other States of the Union, as will be seen by a brief reference to her statutes.

"Courts of Probate are especially established for the opening and settling of all successions" (Code of Practice, Art. 921.

By Sec. 5 of Art. 2924 of the Civil Code, they are given power "to grant orders, to make inventories and sales of the property of successions."

Section 3997 of the Revised Statutes directs "that all sales of property of successions and all sales made pursuant to an order or decree of any court in this State may be made either by the sheriff, or by an auctioneer, or by the representatives of successions as the Court may order."

And no sale can be made by the representatives of a succession without the authority of an order of Court.

Civil Code, Art. 2622.

Donaldson vs. Hall, 7 Martin, New Series (La.), 113.

Succession of Bright, 38 La. An. 141.

Article 2623 of the Civil Code declares that when a sale is made "the adjudication made and recorded by the sheriff, auctioneer, or representative of a succession is a complete title."

Finally, Art. 2616 of the Civil Code declares the following sales to be *judicial sales*:

1. "Those which take place when the property of a debtor has been seized by order of a court to be sold for the purpose of paying the creditor.

2. "Those which are allowed in matters of succession and partition."

This Court has had occasion to examine into the authority and jurisdiction of the Probate Courts of the State of Louisiana in *Simmons vs. Saul*, 138 U. S. 439, and arrived at the conclusion that in proceedings before them for the sale of succession property, they act *in rem*, and that sales made

by them are strictly judicial sales. That decision has since been referred to by the Supreme Court of the State as a correct exposition of the law, in *Gravenburg vs. Bradford*, 44 An. (La.) 400. It seems, therefore, perfectly clear that all sales made under authority of Probate Courts in Louisiana are strictly judicial in character, and confer title on a purchaser by operation of the law which takes and appropriates the property of a decedent in accordance with the policy of the State without the consent or concurrence of any legal representative or heir.

This brings us to the question whether a sale of a *chose in action*, made by order of a Probate Court, is an assignment within the meaning of the act of 1875. We may assume that when the Congress used the words "assignment" and "assignee" in the act of 1875, it used them in the appropriate and ordinary sense. Says the Court of Appeals in *Hight vs. Sackett*, 34 N. Y. 447: "The idea of an assignment is essentially that of a transfer by one existing party to another existing party," quoting 1 Tomlin Law Dictionary—*Assigns*.

While an executor is sometimes declared in law to be the assignee of the testator, he takes by operation of law. The testator names the executor, but it is the law that makes him the assignee of the property. But a legatee can not be considered an assignee either in law or in the ordinary use of language. *Ibid*.

Assignments of this character, however, do not come within the ordinary meaning of the act of 1875, nor within the mischief of that statute, as we will show later in this brief.

The distinction between purely derivative titles and those which pass by operation of law is very clearly stated by this Court in *Grignon's Lessee vs. Astor*, 2 Howard, 319. Says the Court in that case: "On proceedings to sell real estate of an indebted intestate there are no adversary parties, the proceeding is *in rem*, the administrator represents the land; they are analogous to proceedings in admiralty where the only question of jurisdiction is the power of the Court over the thing, without regard to the persons who may have

an interest in it. All the world are parties. In the Orphans' Court, and in all courts who have the power to sell the estates of intestates, their action operates on the estate, not on the heirs of the intestate; a purchaser claims not their title, but one paramount by operation of law." See also *McPherson vs. Cunliff*, 11 S. & R. 428.

On the same principle it has been frequently held by this Court that heirs, legatees, administrators and executors succeed to the rights of the deceased by operation of law, and not by assignment within the meaning of the judiciary acts.

Childress vs. Emory, 8 Wheat. 548.

McNutt vs. Bland, 2 How. 15.

Rice vs. Houston, 13 Wall. 66.

Holmes vs. Goldsmith, 147 U. S. 161.

So it has been held that a receiver takes choses coming to his hands by operation of law, and is not subject to the disabilities of an assignee under those acts.

White vs. Ewing, 159 U. S. 36.

In *New Orleans vs. Gaines*, it was claimed that Mrs. Gaines could not sue in the Circuit Court to recover rents due citizens of Louisiana under written subrogations of their rights, because of the restrictions contained in the statute of 1875. But this Court held that although the plaintiff sued on equities derived from persons who could not maintain an action for the rents in the Circuit Court, this disability did not affect her. Said the Court: "Subrogation is not assignment. The most that can be said of it is that the subrogated creditor by operation of law represents the person to whose right he is subrogated. But we have repeatedly held that representatives may stand upon their own citizenship, irrespective of the citizenship they represent. The evil which the law intended to obviate was the voluntary creation of Federal jurisdiction by simulated assignments. But assignments by operation of law are not within the mischief of the law."

On the same principle it has been held that a voluntary assignment for the benefit of creditors under the insolvent laws of a State, of a claim against the United States, is a transfer

by operation of law, not within the prohibition of Sec. 3477, U. S. Rev. Stat., forbidding the assignment of such claims.

Butler vs. Generelly, 146 U. S. 303.

The only case we can find which is seemingly opposed to the principle announced by the Court in the foregoing cases, is that of *Séré vs. Pitot*, 6 Cranch, 332, in which it is held that an assignment of a chose in action, by an insolvent to a syndic, under the insolvent laws of Louisiana, for the benefit of creditors, is an assignment within the meaning of the judiciary act of 1789. This decision, it is claimed, has been approved by the Court in the late case of *Canal Bank vs. Dodson*, 157 U. S., 205, but an examination of the opinion will show that the Court merely referred to *Séré vs. Pitot* for the purpose of showing that the Statute applies as well to equitable as to legal assignments, and for no other purpose. We think this early case has been overruled by the later decisions, but giving the decision the fullest effect, we submit that it has no application to judicial sales of the property of estates in which the purchaser, as in this case, takes title by operation of law.

Assignments under insolvent laws are generally voluntary, and they pass the title to property and choses by deed of transfer, which, it may be said, is the act of a living person, and not of the law, although the law permits the act to be done. Possibly, therefore, this class of assignments may come within the mischief of the Statutes.

But this consideration can have no application to the transfer of estates of decedents. Such estates are disposed of by statutes of distribution, which, acting upon the property, transmits estates in accordance with the policy of the State. No one can control the disposition of his property after death without the authority of the law of the country in which it is situated. Sir William Blackstone in his commentaries (Vol. II., C., I., 10-13.) considers the descent, devise, and transfer of property equally political institutions and creatures of municipal law, and not natural rights; and that the law of nature suggests that on the death of the possessor, the estate should become common and open to the next occu-

pant. Although some writers seem to doubt the existence of this law of nature to the extent claimed by Blackstone, all admit that the particular distribution of the property of decedents depends solely on positive laws. It follows that whether an estate is taken and sold to pay debts of the decedents, or applied to the payment of legacies, or delivered to legal heirs, it is the disposition of the law, and not of any person. It was the law acting on the property of Carr after his death, through the instrumentality of the Court of Probate, that gave plaintiff title to the warrants sued on in this case. Plaintiff became owner, therefore, solely by operation of law and not by assignment from any one. In this view of the case, the Circuit Court erred in supposing that the citizenship of the heirs of Carr, or of his legal representatives, affected the question of jurisdiction, as they did not in fact sell, and had nothing whatever to do with the devolution of title from Carr's succession to the plaintiff. We submit, therefore, that the judicial sale of the warrants was not an assignment either within the letter or the mischief of the Act of 1875.

A purchaser of the property of a decedent must, we think, be held to take title either through a legal subrogation, or as the legal representative of the deceased owner. In either case he acquires title by operation of law, and not by assignment, which implies a transfer by contract.

Wherefore, plaintiff in error prays that the judgment of the Circuit Court sustaining defendant's exception to its jurisdiction be reversed and set aside with cost, and that a new trial be awarded.

Respectfully submitted,

J. D. ROUSE,
WM. GRANT,

Attorneys for Plaintiff in Error.

at: 229

Brief of Farrar, Jonas, Knuttschneit
v. Lazarus for D.C.

SUPREME COURT OF THE UNITED STATES

Filed Jan. 27th 1900.

Concordia, Texas, 1899.

WILLIAM O. GLASS,

Plaintiff in Error.

vs.

THE POLICE JURY OF THE PARISH OF CONCORDIA,

Defendant in Error.

Brief in Behalf of Defendant in Error.

EDGAR B. FARRAR,
BENJAMIN T. JONAS,
BENEST B. KNUTTSCHNEIT,
HENRY L. LAZARUS,

Counsel for Defendants in Error.

SUPREME COURT OF THE UNITED STATES.

No. 229.

OCTOBER TERM, 1899.

WILLIAM C. GLASS,

Plaintiff in Error.

versus

THE POLICE JURY OF THE PARISH OF CONCORDIA,

Defendant in Error.

Brief in Behalf of Defendant in Error.

STATEMENT.

Matthew Carr was a resident citizen of the State of Louisiana. He owned, at the time of his death, warrants or orders for levee work, drawn by the levee engineer on the treasurer of the Parish of Concordia, a municipal corporation of the State of Louisiana. His succession was administered in the Probate Court of the Parish of Concordia, where he was domiciled at the time of his death. An administrator was appointed, who was also a citizen of the State of Louisiana. A sale of the property of Carr was made under the order of the Probate Court by the sheriff of the parish of Concordia. At this sale William C. Glass, who was then, and who still remains, a citizen of the State of Missouri, bought the warrants in question. He thereafter filed suit in the United States Circuit Court for the Eastern District of Louisiana against the parish of Concordia, declaring upon the said warrants. This suit

was brought while the Act of 1875 was in force. On June 17, 1898, an amended petition was filed, and to the original and this amended petition defendant filed a plea to the jurisdiction, on the ground that the suit was brought upon a chose in action, acquired by the plaintiff from a citizen of the State of Louisiana, on which chose of action the original holder could not sue in the United States Circuit Court. The court below maintained the plea and dismissed the petition.

ARGUMENT.

The issue in this case is very narrow. It is stated on page 3 of appellant's brief as follows:

"We concede that neither Carr, his heirs, nor the administrator of his estate, nor the sheriff who made the sale, nor the judge who ordered the sale, possessed the necessary citizenship to sue on the warrants in the Circuit Court, at the time this action was brought. But we assert on principle that a purchaser at a sale made by authority of a Probate Court derives title from none of these sources, but takes title by the adjudication of the law acting directly *in rem* upon the property itself."

The prohibition on the jurisdiction of the Federal Courts in the judiciary act of 1789 was as follows:

"That no District or Circuit Court shall have cognizance of any suit to recover the contents of any promissory note, or other chose in action in favor of an assignee, unless suit might have been prosecuted in such court to recover the said contents, if no assignment had been made."

The prohibition contained in the act of March 3, 1875, is as follows:

"Nor shall any Circuit or District Court have cognizance of any suit founded on contract in favor of an assignee unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in case of promissory notes negotiable by the law merchant, and bills of exchange.

This language covers all assignments. This point was settled at a very early day, under the Act of 1789, in the case of Sere

vs. Pitot *et al.*, 6 Cranch, 332, decided by Chief Justice Marshall. In that case the assignment had been made to a syndie for the benefit of creditors, under the law of Louisiana, and the Court held that such assignment did not give the Court jurisdiction. Judge Marshall said, page 336:

"The circumstance that the assignment was made by operation of law, and not by the act of the party, might probably take the case out of the policy of the act, but not out of its letter and meaning. The Legislature has made no exception in favor of assignment so made. It is still a suit to recover a chose in action in favor of an assignee, which suit could not have been prosecuted if no assignment had made; and is, therefore, within the very terms of the law. The case decided in 4 Cranch was on a suit brought by an administrator, and a residuary legatee, who were both aliens. The representatives of a deceased person are not usually designated by the term assignee, and are, therefore, not within the words of the act."

This case was referred to with approval by Chief Justice Fuller in rendering the opinion of the Court in Mexican National Railroad Company vs. Davidson, 157, United States, p. 205.

The claim presented by the counsel in this case has never been urged during the 111 years that the Courts of the United States have been in operation, under the prohibitions aforesaid.

Following the principle laid down by Chief Justice Marshall in *Sere vs. Pitot*, *supra*, it has been held that heirs, legatees, administrators, executors and receivers, are not assignees in law or in fact, and are, therefore, not within the prohibition of the statute. But there is no case in the books, and no principle stated in any case in the books, which declares that the purchaser at a judicial sale, whether made by a probate court or made by a court of ordinary jurisdiction in the execution of a writ of *fi. fa.*, takes the property purchased by operation of law, and that he is not an assignee.

The right to appeal to the courts to enforce a contract, and

the right to lay the process of the Court upon the property of the debtor to enforce the contents of a contract are necessary elements of every legal contract. The elements of every legal right are: 1. An active subject; 2. A passive subject; 3. An object, and 4. The *vinculum juris*.

It is in recognition of these elements that this Court has again and again declared that any legislative action which tends to take away, or materially impair, the remedy given by law to enforce a contract, at the time it was made, is an impairment of the obligation of the contract under the Constitution of the United States.

When a man is alive and refuses to pay his debts, judgment is obtained against him on those debts, process issues under the judgment, the executive officer of the Court levies upon his property, advertises it for sale, adjudicates it to the purchaser, and makes the purchaser a deed therefor. Such a sale transfers the title of the debtor to the purchaser. The officer of the Court is the mere agency by which the title is transferred with the implied consent of the judgment debtor, which consent was necessarily contained in the contract by which his debt was created. The judgment debtor in such a sale is the warrantor of the title so transferred, and in case the purchaser is evicted, he can recover the price paid from this judgment debtor. This is undoubtedly the law of Louisiana, where warranty is of the nature of all sales, voluntary as well as judicial, and is only excluded by express covenant.

If a debtor in Louisiana dies, his title is instantaneously vested in his heirs under the maxim, *le mort saisit le vif*, as appears from the following articles of the Revised Civil Code of Louisiana:

“Article 940. A succession is acquired by the legal heir, who is called by law to the inheritance, immediately after the death of the deceased person to whom he succeeds.

This rule applies also to testamentary heirs, to instituted heirs and universal legatees, but not to particular legatees.

Article 941. The right mentioned in the preceding article is acquired by the heir by the operation of the law alone, before he has taken any step to put himself in possession, or has expressed any will to accept it.

Thus children, idiots, those who are ignorant of the death of the deceased, are not the less considered as being seized of the succession, though they be merely seized of right and not in fact.

Article 942. The heir being considered seized of the succession from the moment of its being opened, the right of possession which the deceased had continues in the person of the heir, as if there had been no interruption, and independent of the fact of possession.

Article 943. The right of possession, which the deceased had, being continued in the person of his heir, it results that this possession is transmitted to the heir with all its defects, as well as all its advantages, the change in the proprietor producing no alteration in the nature of the possession.

Thus the extent of the rights of the deceased regulates those of the heir, who succeeds to all his rights which can be transmitted, that is, to all those which are not, like usufruct, attached to the person of the deceased.

Article 944. The heir being considered as having succeeded to the deceased from the instant of his death, the first effect of this right is that the heir transmits the succession to his own heirs, with the right of accepting or renouncing, although he himself have not accepted it, and even in case he was ignorant that the succession was opened in his favor.

Article 945. The second effect of this right is to authorize the heir to institute all the actions, even possessory ones, which the deceased had a right to institute, and to prosecute those already commenced. For the heir, in everything, represents the deceased, and is of full right in his place as well for his rights as his obligations."

Under the law of Louisiana, no title to any asset of a decedent passes to his executors or administrators. The title is at all times and under all circumstances in the heir, whoever or wherever he may be, even without his knowledge and against his will. The executor and administrator are given by law a fictitious seizen or right of possession which is paramount to that of the heir, for the purposes only of administering the estate.

Administrators under the law of Louisiana are appointed only where the heirs, or some of them, accept, with benefit of inventory, either in law or in fact, or where the creditors of the estate demand such appointment, on the refusal of the heirs, who have accepted purely and simply, to give security for the debt of their *de cujus*. See Civil Code of Louisiana, Articles 1032 *et sequenter*.

The statement made by counsel on pages 4 and 5 of his brief that proceedings in the probate courts of the State of Louisiana for the sale of property are proceedings *in rem* is an error, and the case quoted of *Simmons vs. Saul* (138 U. S., p. 439) does not hold any such doctrine.

It therefore appears that when the counsel says in the quotation above given that a purchaser at a sale made by authority of a probate court derives title neither from the heirs nor the administrator of his estate, he is fundamentally mistaken.

Nor is there any legal force in the further statement contained in that quotation to the effect that such purchaser "takes title by the adjudication of the law acting directly *in rem* upon the property itself." The only cases of proceedings *in rem*, where the action is against a thing itself, are proceedings in admiralty and proceedings for the forfeiture of certain offending things under the police laws of the various States.

Again, a judicial assignment is a necessary element of any judicial sale. Such a sale must be accompanied by the consent of the vendor (in such case that of the sheriff acting as the legal agent of the heirs), and the consent of the vendee, uniting upon the price and the thing to be sold, and in evidence of this consent a formal deed is executed.

Under the law of Louisiana a sheriff or auctioneer who sells property under the order of a court is required to make a *proces verbal* of such sale in the presence of two witnesses, and such *proces verbal*, when so signed by the sheriff or the auctioneer and the two witnesses, constitutes authentic evidence of the sale. If Glass in this case were called upon at the trial to prove his title it would be necessary for him to exhibit either the *proces verbal* of the sheriff's sale to him,

of a notarial act confirming such sale, signed by the representative of the succession and accompanied by the *proces verbal* as an exhibit.

Under these circumstances, we submit that it is to juggle with words to say that the title of the heirs of a descendant is transferred to a purchaser at a probate sale of the property of their *de cujus* by operation of law, and that any such title is devolved in the same manner as the law devolves title by its own operation upon an executor, an administrator, an heir, a legatee, or a receiver.

We believe that the judgment below was correct and should be affirmed.

Respectfully submitted,

EDGAR H. FARRAR,
BENJAMIN F. JONAS,
ERNEST B. KRUTTSCHNITT,
HENRY L. LAZARUS,
Counsel for Defendants in Error.

Statement of the Case.

GLASS v. CONCORDIA PARISH POLICE JURY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF LOUISIANA.

No. 229. Submitted January 8, 1900. — Decided January 29, 1900.

The warrants and orders sued on in this case were payable to the order of Matthew Carr, deceased, who was a citizen of the State of Louisiana. They were assets of his estate, and the plaintiff in error acquired title to them through a judicial sale made by the sheriff of the parish of Concordia on the 22d day of May, 1868, under authority of an order of the probate court of said parish having the administration of said estate. The plaintiff in the suit was, at the date of his said purchase, and at the date of filing his original petition herein, a citizen of the State of Missouri, and the defendant was a citizen of the State of Louisiana. *Held*, that the plaintiff came within the restriction of § 1 of the act of March 3, 1875: "Nor shall any Circuit or District Court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in said court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant, and bills of exchange," and that the Circuit Court below correctly held that jurisdiction could not be sustained.

This was a suit brought in the Circuit Court of the United States for the Eastern District of Louisiana by William C. Glass, a citizen of the State of Missouri, against the parish of Concordia, to recover on certain warrants or orders for levee work; and, having been dismissed for want of jurisdiction, came to this court on the following certificate:

"This cause was tried at the present term of the court solely on the defendant's exception to the jurisdiction of the court, and it appearing from the jurisdictional facts alleged in plaintiff's petition, admitted to be true by said exception, that the warrants and orders sued on were payable to the order of Matthew Carr, deceased, who was a citizen of the State of Louisiana, and were assets of his estate, and that the plaintiff acquired title thereto through a judicial sale made by the sheriff of the parish of Concordia on the 22d day of May, 1868, under authority of an order of the probate court of said parish having the administration of said estate; that plaintiff

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at the date of his said purchase and at the date of filing his original petition herein, on the 2d day of November, 1877, was a citizen of the State of Missouri, and that the defendant was a citizen of the State of Louisiana. Under the state of facts the only question at issue upon the trial of said exception was whether the case, for the purpose of jurisdiction, comes within the following restriction imposed by section 1 of the act of Congress approved March 3, 1875: 'Nor shall any Circuit or District Court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes, negotiable by the law merchant, and bills of exchange.' And the court, for the reasons set forth in the written opinion hereto annexed and made part hereof, has this day maintained the defendant's exception to the jurisdiction of this court and dismissed plaintiff's petition, with leave to amend, if so advised, and without prejudice, and now grants this certificate for the purpose of enabling the plaintiff to obtain a review of the Supreme Court of said jurisdictional question under the fifth section of the act of Congress approved March 3, 1891."

Mr. J. D. Rouse and Mr. William Grant for plaintiff in error.

Mr. Edgar H. Farrar, Mr. Benjamin F. Jonas, Mr. Ernest B. Kruttschnitt and Mr. Henry L. Lazarus for defendants in error.

MR. CHIEF JUSTICE FULLER, after making the above statement, delivered the opinion of the court.

Counsel for plaintiff in error state in their argument: "We concede that neither Carr, his heirs, nor the administrator of his estate, nor the sheriff who made the sale, nor the judge who ordered the sale, possessed the necessary citizenship to sue on the warrants in the Circuit Court at the time this action was brought. But we assert on principle, that a purchaser at a sale made by authority of a probate court

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derives title from none of these sources, but takes title by the adjudication of the law acting directly, *in rem*, upon the property itself."

The eleventh section of the judiciary act of 1789 provided: "Nor shall any District or Circuit Court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange."

In *Serè v. Pitot*, 6 Cranch, 332, the assets of an insolvent partnership passed to syndics appointed for the benefit of creditors under the laws of the Territory of Orleans, and this court held that the syndics could not sue in the Federal courts if the insolvents could not have done so. Mr. Chief Justice Marshall said: "The circumstance, that the assignment was made by operation of law, and not by the act of the party, might probably take the case out of the policy of the act, but not out of its letter and meaning. The legislature has made no exception in favor of assignments so made. It is still a suit to recover a chose in action in favor of an assignee, which suit could not have been prosecuted if no assignment had been made; and is therefore within the very terms of the law. The case decided in 4 Cranch, was on a suit brought by an administrator, and a residuary legatee, who were both aliens. The representatives of a deceased person are not usually designated by the term 'assignees,' and are, therefore, not within the words of the act."

The applicable language of the first section of the act of March 3, 1875, c. 137, 18 Stat. 470, which regulated the jurisdiction of the Circuit Courts when this suit was instituted, was as follows: "Nor shall any Circuit or District Court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant and bills of exchange."

The differences between this provision and that of the act

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of 1789 are not material here. *Serè v. Pitot*, was decided in 1810; has been cited many times; frequently, with approval, on analogous points, *Smith v. Railroad Company*, 99 U. S. 398; *Corbin v. County of Black Hawk*, 105 U. S. 659; *Mexican National Railroad v. Davidson*, 157 U. S. 201; though criticised in *Bushnell v. Kennedy*, 9 Wall. 387, has never been overruled, and is decisive of the present case.

The title to Carr's estate passed on his death to his heirs. (Rev. Civil Code La., Arts. 940 *et seq.*) These warrants were sold at a judicial sale under authority of an order of the probate court of the parish, having the administration of the estate, by the sheriff of that parish. Glass became the purchaser, and the adjudication made and recorded by the sheriff gave him title. Rev. Civil Code, Arts. 2622, 2623. And, moreover, the Code provided that: "All the warranties to which private sales are subject exist against the heir in judicial sales of the property of successions." Art. 2624; *DeLoach v. Elder*, 14 La. Ann. 662. The title thus obtained did not devolve on Glass in the same manner as the law devolves title by its own operation on an executor, an administrator, an heir, a universal legatee or a receiver, but was transferred by the sale and the adjudication. The purchaser at sales on judgment and execution similarly obtains title through the act of the executive officer.

Conceding that proceedings in settlement of estates in probate courts are in themselves proceedings *in rem*, yet the title to property ordered to be sold in such proceedings is not transferred by the mere order of sale, but by the sale taking place as prescribed. Its validity depends on the jurisdiction of the probate court; its transfer is accomplished in the designated way through the designated instrumentality.

In our opinion Glass came within the restriction of the statute, and the Circuit Court correctly held that jurisdiction could not be sustained.

Judgment affirmed.